



ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

Felecia A. Rotellini
Superintendent of Financial Institutions

Janet Napolitano
Governor

April 4, 2008



Via Certified Mail

David Ware, President
Regal Mortgage Company dba Regal Online
Mortgage Guarantee Mortgage Corporation
2575 E. Camelback Road, Suite 450
Phoenix, AZ 85016

Reference: Docket # 08F-BD050-BNK / Regal Mortgage Company dba Regal Online
Mortgage Guarantee Mortgage Corporation

Dear Mr. Ware:

Please find the enclosed formal Notice of Hearing. The hearing is scheduled for **May 12, 2008, at 1:30 p.m.** at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona.

Please contact **Assistant Attorney General Craig Raby** at **(602) 542-8889** with any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "R.D. Charlton".

Robert D. Charlton
Assistant Superintendent

RDC:sll

Enclosures

cc: Craig Raby, Assistant Attorney General

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Broker License of:

No. 08F-BD050-BNK

3 **REGAL MORTGAGE COMPANY DBA**
4 **REGAL ONLINE MORTGAGE**
2575 E. Camelback Road, Suite 450
Phoenix, AZ 85016

NOTICE OF HEARING

5
6 Petitioner.

7 PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-137,
8 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of
9 Administrative Hearings, an independent agency, and is scheduled for May 12, 2008, at 1:30 p.m., at
10 the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602)
11 542-9826 (the "Hearing").

12 The purpose of the Hearing is to determine if grounds exist for: (1) the issuance of an order
13 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
15 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
16 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
17 suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-905; and (4) an order or any
18 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
19 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

20 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of
21 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied
22 or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to
23 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the
24 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office
25 of Administrative Hearings has designated Michael Wales, at the address and phone number listed
26 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative

1 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
2 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
3 decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law
4 Judge is specifically prohibited from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**
6 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
10 counsel, or to proceed without counsel during the giving of all evidence, to have a reasonable
11 opportunity to inspect all documentary evidence, to cross-examine witnesses, to present evidence
12 and witnesses in support of his/her interests, and to have subpoenas issued by the Administrative
13 Law Judge to compel attendance of witnesses and production of evidence. Pursuant to A.R.S.
14 § 41-1092.07(B), any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
16 made by a court reporter or by electronic means. Any party that requests a transcript of the
17 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
19 Attorney General Craig A. Raby, (602) 542-8889, 1275 West Washington, Phoenix, Arizona 85007.

20 **NOTICE OF APPLICABLE RULES**

21 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
22 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
23 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
24 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
25 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through
26 R2-19-122. A copy of these rules is enclosed.

1 Pursuant to A.A.C. R20-4-1209, Petitioner shall file a written answer **within twenty (20)**
2 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Petitioner's position
3 or defense and shall specifically admit or deny each of the assertions contained in this Notice of
4 Hearing. If the answering Petitioner is without or are unable to reasonably obtain knowledge or
5 information sufficient to form a belief as to the truth of an assertion, Petitioner shall so state, which
6 shall have the effect of a denial. Any assertion not denied is deemed admitted. When Petitioner
7 intends to deny only a part or a qualification of an assertion, or to qualify an assertion, Petitioner
8 shall expressly admit so much of it as is true and shall deny the remainder. Any defense not raised
9 in the answer is deemed waived.

10 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Petitioner will be**
11 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
12 true and admitted and the Superintendent may take whatever action is appropriate, including
13 suspension, revocation, denial of Petitioner's license or affirming an order to Cease and Desist and
14 imposition of a civil penalty or restitution to any injured party.

15 Petitioner's answer shall be mailed or delivered to the Arizona Department of Financial
16 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
17 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
18 Arizona 85007 and to Assistant Attorney General Craig A. Raby, Consumer Protection & Advocacy
19 Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

20 **Persons with disabilities may request reasonable accommodations such as interpreters,**
21 **alternative format or assistance with physical accessibility.** Requests for accommodations must
22 be made as early as possible to allow time to arrange the accommodations. If accommodations are
23 required, call the Office of Administrative Hearings at (602) 542-9826.

24 **FACTS**

25 1. Petitioner Regal Mortgage Company, Inc. ("Regal") is a New Mexico corporation
26 authorized to transact business in Arizona as a mortgage broker, license number MB 0904728,

1 within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of Regal's business is that of making,
2 negotiating, or offering to make or negotiate loans secured by Arizona real property, within the
3 meaning of A.R.S. § 6-901(6).

4 2. A September 27, 2007 through October 2, 2007, examination of Regal, conducted by the
5 Department, revealed that Regal:

- 6 a. Failed to conduct the minimum elements of reasonable employee investigations
7 before hiring employees, specifically:
- 8 i. Petitioner failed to obtain a completed and properly dated Employment
9 Eligibility Verification Form ("I9") before hiring eight (8) employees;
 - 10 ii. Petitioner failed to collect complete Immigration Reform Control documents
11 prior to hiring five (5) employees;
 - 12 iii. Petitioner failed to obtain a completed and signed employment application
13 ("EA") before hiring two (2) employees;
 - 14 iv. Petitioner failed to obtain a signed statement and detailed information
15 regarding an applicant's felony convictions ("SS") before hiring nine (9)
16 employees;
 - 17 v. Petitioner failed to consult with the applicant's most recent or next most
18 recent employer ("EI") before hiring nine (9) employees;
 - 19 vi. Petitioner failed to inquire regarding an applicant's qualifications and
20 competence for the position ("QI") before hiring nine (9) employees;
 - 21 vii. Petitioner failed to obtain a current credit report from a credit reporting
22 agency ("CR") before hiring eight (8) employees;
 - 23 viii. Petitioner failed to obtain an explanation for derogatory credit before hiring
24 five (5) employees; and
 - 25 ix. Petitioner failed to correct this violation from its previous examination;
- 26 b. Failed to reconcile and update all records specified in A.A.C. R20-4-917(B) in each

1 calendar quarter, specifically:

- 2 i. Petitioner failed to reconcile its accounts since June 2007; and
- 3 ii. Petitioner failed to correct this violation from its previous examination;
- 4 c. Failed to maintain a complete record containing all documents as required;
- 5 i. Petitioner failed to provide minutes for review at the Department's
- 6 examination;
- 7 d. Failed to maintain all required information on its list of all executed loan applications
- 8 or executed fee agreements, specifically:
- 9 i. Petitioner's loan list failed to contain a provision for entering the application
- 10 date or name of loan officer;
- 11 ii. Petitioner's loan list failed to include declined and withdrawn applications;
- 12 iii. Petitioner's loan list failed to have separate entries for disposition and
- 13 disposition date; and
- 14 iv. Petitioner failed to correct this violation from its previous examination;
- 15 e. Petitioner failed to maintain originals or clearly legible copies of all mortgage loan
- 16 transactions for not fewer than five years, specifically:
- 17 i. Petitioner failed to keep and maintain the withdrawal, cancellation, or denial
- 18 notice for two (2) borrowers;
- 19 f. Failed to comply with the disclosure requirements of Title I of the Consumer Credit
- 20 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
- 21 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
- 22 under these acts, specifically:
- 23 i. Petitioner failed to provide complete Truth in Lending ("TIL") disclosures to
- 24 five (5) borrowers;
- 25 ii. Petitioner failed to disclose the Yield Spread Premium ("YSP") on the Good
- 26 Faith Estimate ("GFE") to four (4) borrowers;

- 1 iii. Petitioner failed to provide complete, updated Servicing Transfer (ST")
- 2 disclosures to five (5) borrowers; and
- 3 iv. Petitioner failed to correct this violation from its previous examination;
- 4 g. Failed to keep and maintain at all times correct and complete records as prescribed by
- 5 the Superintendent, specifically:
- 6 i. Petitioner failed to maintain complete records, evidenced by the fact that it
- 7 was unable to provide any back-up documents;
- 8 h. Failed to use a written agreement, signed by all parties, when accepting fees and/or
- 9 documents in connection with mortgage loan applications, specifically:
- 10 i. Petitioner failed to maintain a statutorily correct written agreement in the loan
- 11 files of at least four (4) borrowers; and
- 12 ii. Petitioner failed to correct this violation from its previous examination;
- 13 i. Failed to ensure that the Responsible Individual maintained a position of active
- 14 management, specifically:
- 15 i. Petitioner's Responsible Individual, David Ware, failed to be in active
- 16 management as evidenced by his failure to ensure Petitioner's compliance
- 17 with Arizona Statutes and Rules governing mortgage brokers;
- 18 j. Failed to notify the Superintendent prior to maintaining branch records at its principal
- 19 place of business, specifically:
- 20 i. Petitioner failed to notify the Superintendent that it has maintained branch
- 21 office records at its principal place of business office, financials with its
- 22 accountant, and organizational files with its lawyer;
- 23 k. Used an appraisal disclosure that places an unlawful 90-day limit on the amount of
- 24 time in which a borrower may obtain a copy of an appraisal for which the borrower
- 25 has paid;
- 26 i. Petitioner has used a disclosure entitled "NOTICE OF RIGHT TO RECEIVE

1 AN APPRAISAL REPORT” that includes a 90-day limit on the amount of
2 time an applicant may request the appraisal; and

- 3 1. Failed to obtain the Superintendent’s approval of its use of a computer or mechanical
4 recordkeeping system, specifically:

- 5 i. Petitioner failed to provide the Superintendent with advance written notice
6 seeking approval of its computer or mechanical record keeping system, as
7 evidenced by copies of its financial and other records appearing to be
8 generated from one or more computer systems.

9 3. Based upon the above findings, the Department issued and served upon Regal a Notice of
10 Assessment on February 11, 2008.

11 4. On March 13, 2008, Petitioner filed a Request For Hearing to appeal the Notice of
12 Assessment.

13 LAW

14 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to
15 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,
16 rules, and regulations relating to mortgage brokers.

17 2. By the conduct set forth in the Findings of Fact, Regal violated the following:

- 18 a. A.R.S. § 6-903(N) and A.A.C. R20-4-102 by failing to conduct the minimum
19 elements of reasonable employee investigations before hiring employees;
20 b. A.A.C. R20-4-917(C) by failing to reconcile and update all records specified in
21 A.A.C. R20-4-917(B) in each calendar quarter;
22 c. A.A.C. R20-4-917(B)(9) by failing to maintain a complete record containing all
23 documents as required;
24 d. A.A.C. R20-4-917(B)(1) by failing to maintain all required information on its list of
25 all executed loan applications or executed fee agreements,
26 e. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(6) by failing to maintain originals or

- 1 clearly legible copies of all mortgage loan transactions for not fewer than five years,
- 2 f. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e) by failing to comply with the
- 3 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.
- 4 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§
- 5 2601 through 2617), and the regulations promulgated under these acts,
- 6 g. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B) by failing to keep and maintain at all
- 7 times correct and complete records as prescribed by the Superintendent,
- 8 h. A.R.S. § 6-906(C) by failing to use a written agreement, signed by all parties, when
- 9 accepting fees and/or documents in connection with mortgage loan applications,
- 10 i. A.R.S. § 6-903(E) and A.A.C. R20-4-102 by failing to ensure that the Responsible
- 11 Individual maintained a position of active management,
- 12 j. A.R.S. § 6-906(A) by failing to notify the Superintendent prior to maintaining branch
- 13 records at its principal place of business,
- 14 k. A.R.S. § 6-906(C) by using an appraisal disclosure that places an unlawful 90-day
- 15 limit on the amount of time in which a borrower may obtain a copy of an appraisal for
- 16 which the borrower has paid;
- 17 l. A.A.C. R20-4-917(A) by failing to obtain the Superintendent's approval of its use of
- 18 a computer or mechanical recordkeeping system,

19 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order

20 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to

21 take the appropriate affirmative actions, within a reasonable period of time prescribed by the

22 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and

23 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the

24 suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-905; and (4) an order or any

25 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage

26 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

1 WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the
2 above-described violations, the Superintendent may affirm the February 11, 2008 Notice of
3 Assessment, pursuant to A.R.S. § 6-137; impose a civil money penalty pursuant to A.R.S. § 6-132;
4 suspend or revoke Petitioner's license pursuant to A.R.S. § 6-905; and order any other remedy
5 necessary or proper for the enforcement of statutes and rules regulating mortgage brokers pursuant to
6 A.R.S. §§ 6-123 and 6-131.

7 DATED this 4 day of April, 2008.

8 Felecia A. Rotellini
9 Superintendent of Financial Institutions

10 By Robert D. Charlton
11 Robert D. Charlton
Assistant Superintendent of Financial Institutions

12 ORIGINAL OF THE NOTICE OF HEARING filed
13 this 4th day of April, 2008 in the office of:

14 Felecia A. Rotellini
15 Superintendent of Financial Institutions
16 Arizona Department of Financial Institutions
Attn: Susan L. Longo
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

17 COPY of the foregoing mailed/delive

18 Michael Wales, Administrative Law
19 Office of Administrative Hearings
1400 W. Washington, Suite 101
20 Phoenix, AZ 85007

21 Craig A. Raby, Assistant Attorney G
Attorney General's Office
22 1275 West Washington
Phoenix, AZ 85007

23 Robert D. Charlton, Assistant Super
24 Chris Dunshee, Senior Examiner
Arizona Department of Financial In
25 2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
26

Please date
April
4

1 AND COPY MAILED SAME DATE by
2 Certified Mail, Return Receipt Requested, to:

3 Regal Mortgage Company dba Regal Online
4 Mortgage Guarantee Mortgage Corporation
5 c/o David Ware, President
6 2575 E. Camelback Road, Suite 450
7 Phoenix, AZ 85016
8 Petitioner

9 David Ware, Statutory Agent For:
10 Regal Mortgage Company dba Regal Online
11 Mortgage Guarantee Mortgage Corporation
12 2575 E. Camelback Road, Suite 450
13 Phoenix, AZ 85016

14 
15 _____

16 163738; PHX-AGN-2007-0525